

ARTICLE 28: LIMITATIONS AND WAIVERS FOR U.S. TOURS (8-YEAR RULE)

STATEMENT OF PURPOSE

- 28.1 This article sets forth the procedures and criteria to be used by Foreign Service career members to request extension of a U.S. assignment beyond the 8-year maximum statutory limit for continuous service in the United States. For the purpose of this article, an assignment is a personnel action of 365 days or more.

BACKGROUND

- 28.2 The duration of tours of duty in the United States for career members is subject to the limitations as defined in Article 27 (Assignment Policy) and the statutory requirement as defined in Section 504 of the Foreign Service Act. The Act states that continuous service in the United States is not to exceed eight years, but may be extended beyond that period due to special circumstances.
- 28.3 Management officials may extend assignments beyond eight years in compelling circumstances to meet the needs of the Agency. Extensions may also be requested by employees. The date by which personnel actions related to the 8-year rule must be implemented is the last day of the calendar year, which includes the eighth anniversary of the career member's return to the United States.

PROCEDURES

- 28.4 The Servicing Personnel Office (SPO) is responsible for identifying career members who are approaching the 8-year limit. Career members will be notified in writing by the SPO at least two years before the end of their 8-year limit.
- 28.5 Career members who are in their seventh year of continuous service in a position or combination of positions in the U.S. and want an extension of the 8-year limit, must submit a written request fully stating the reason(s) for the extension to the SPO and DA/FAA by June 15 of the seventh year. For example, a career member who returned to the U.S. on July 1, 2002, will have eight years of continuous domestic service on June 30, 2010. If the career member wants to request an extension to the 8-year limit, s/he must do so by June 15, 2009.
- 28.6 The SPO will review each request for completeness and forward it to the Executive Advisory Group (EAG).
- 28.7 The EAG will review each request on a case-by-case basis and, applying the criteria

listed in later sections of this article, make a recommendation to the Administrator/FAS. The EAG's recommendation will be documented in the EAG meeting minutes.

- 28.8 The Administrator/FAS decides all extension requests.
- 28.9 The career member will be notified in writing by the SPO of the Administrator's decision.

CRITERIA

- 28.10 The EAG will recommend approval of a request for a waiver of the 8-year limit only on an exceptional basis, and will apply one or more of the following criteria to support its recommendation:
 - a. Do the Agency's needs require the employee's service in the position? Extension requests under this criterion will be initiated by management and must state why another qualified employee, not subject to the 8-year limit, could not be selected for the position. The request should describe unique circumstances involving specialized qualifications. In arriving at its recommendation, the EAG will take into account the rotational nature of most Foreign Service positions. Knowledge and/or experience gained while occupying a position will not be the primary criterion for recommending an extension.
 - b. Has the officer or a family member been denied medical clearance for assignment abroad? The career member must authorize the disclosure of medical information to the SPO. Extensions on medical grounds can only be made on the basis of a current determination by the State Department Medical Division.
- 1. Extensions for medical reasons will be granted in increments of one year. The EAG may, however, recommend that a waiver be granted for two years, if State Department Medical Division certifies that:
 - (a) the employee has a Class 5 medical clearance; and
 - (b) the employee would be able to receive a Class 2 or Class 1 clearance within the next two years.
- 2. In those instances where a family member has received a Class 5 clearance, the one-year limit for an extension is applicable. In lieu of a second year being approved, the employee will be offered the opportunity of assignment

abroad under Separate Maintenance Allowance.

- c. Do the career member's TIC/TIS limits permit a two-year foreign assignment if the member is not promoted or granted a Limited Career Extension (LCE)?
- d. Is the career member the AFSA/FAS VP or Representative? The EAG will recommend a waiver sufficient for the member to complete his/her current term of office and a second term, if re-elected.
- e. Are there compassionate reasons for an extension? In such cases, the career member must submit a request to the Deputy Administrator/FAA. If at all possible, this request should be submitted prior to the due date for Form 193 for assignment in the eighth year. After conferring with AFSA/FAS, the Deputy Administrator/FAA will forward a recommendation to the Administrator/FAS for decision. Information pertaining to such cases will be considered confidential.

DENIAL OF AN EXTENSION REQUEST

- 28.11 Career members must be available for worldwide assignment. Therefore, if an extension request is denied, the career member will be assigned abroad as soon as possible. If the individual refuses the assignment, procedures in Article 27 (Assignment Policy) govern.

GENERAL INFORMATION

- 28.12 A career member's 8-year period of continuous service commences on the effective date the member is assigned to a position in the United States. This date will be documented on form SF-50, Notification of Personnel Action. Foreign assignments of less than 365 days will not establish a new start date for the 8-year rule, unless the assignment is curtailed for the convenience of the Agency. For example, a career member returns to the United States on August 1, 2002, serves in FAS/W for several years and is assigned to a 4-year foreign tour, arriving at post on July 7, 2008. Due to unforeseen circumstances, the member requests assignment back to FAS/W and arrives on June 7, 2009. Since the foreign assignment lasted less than 365 days, the career member's start date for the 8-year rule remains August 1, 2002.
- 28.13 Since Foreign Service Officers are responsible for managing their careers, if an extension is requested, the officer must state when s/he will be able to accept a foreign assignment.
- 28.14 Career members will be consulted in advance and informed in writing of the reasons for any management-initiated decision to extend their assignment in the U.S. beyond

the 8-year limit.

- 28.15 Pending a decision for an extension request, the career member is expected to bid for foreign assignments.
- 28.16 Extension requests will not be approved automatically. For those requests that are approved, extensions will be granted only in increments of one year, other than the exception for medical reasons cited above. Extension requests will not be considered until the career member is in the seventh year of continuous service in a position or combination of positions in the U.S.
- 28.17 The 8-year limit will be extended for all periods a career member is actually in Leave Without Pay (LWOP) status. For example, an individual granted a one year TIC/TIS extension because s/he was on LWOP for 200 days during a performance review period will only receive a 200 day extension to his/her 8-year limit.

RETIREMENT ELIGIBILITY

- 28.18 If a career member is eligible to retire during the year of expiration of his/her 8-year limit and plans to retire during that year, s/he is not required to bid for an international assignment that year. The career member must, however, submit written notice of intent to retire to the SPO prior to the start of that year's bidding process.